

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-212884**DATE:** October 7, 1983**MATTER OF:** General Motors of Canada Limited**DIGEST:**

GAO will not review the Secretary of Transportation's decision not to waive a buy American requirement where that decision is by statute vested in the Secretary's discretion.

General Motors of Canada Limited (GM), a wholly-owned subsidiary of General Motors Corporation, complains about the award of a contract for 42 heavy duty, air conditioned city transit buses under San Diego Transit Corporation (SDTC) invitation for bids No. 83-02-FG, funded by the U.S. Department of Transportation through the Urban Mass Transportation Administration (UMTA). The IFB contained a "buy American" requirement that in effect required final assembly of the buses to take place in the United States. The bases for complaint is SDTC's and UMTA's refusal to grant a waiver of the requirement. We dismiss the protest.

GM requested waiver pursuant to section 165 of the Surface Transportation Assistance Act of 1982, Pub. L. No. 97-424, 96 Stat. 2097, 2136 (1982) on which the IFB requirement is based, which allows the Secretary of Transportation to waive the buy American requirement if its application would be inconsistent with the public interest, and based on the Agreement Concerning Automotive Products Between the Government of the United States and the Government of Canada, referred to as the Auto Pact. An express objective of the Auto Pact is the liberalization of United States and Canadian automotive trade barriers. The Secretary, through UMTA, declined to waive the buy American requirement, stating that it is intended to bolster the ability of domestic manufacturers to participate in federally-assisted mass transportation projects, and that waiver in GM's case would be contrary to this purpose.

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The Surface Transportation Act of 1982 clearly vests within the Secretary of Transportation's discretion the decision whether to waive the requirement in issue. In view of that discretion, and because such decisions often involve balancing of buy American and apparently counter-vailing foreign policies, our Office will not review the Secretary's decision. See Self-Powered Lighting, Ltd., 59 Comp. Gen. 298 (1980), 80-1 CPD 195 and Brown Boveri Corporation, 56 Comp. Gen. 596 (1977), 77-1 CPD 328, involving waiver or failure to waive requirements of the Buy American Act, 41 U.S.C. § 10a (1976).

The complaint is dismissed.

*Harry R. Van Cleve*  
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